

Please replace claims 1, 4, 7, 8, 11, and 12 with the amended versions thereof and add new claim 17 as shown in the CLEAN COPY OF THE AMENDED AND NEW CLAIMS.

### **REMARKS**

Applicants respectfully request reconsideration of this application, and reconsideration of the Office Action dated November 8, 2002 (Paper No.11). Upon entry of this Amendment, claims 1-16 will remain pending in this application. Claims 14-16 are withdrawn. New claim 17 is added. The amendments to the claims, as well as newly added claim 17, are fully supported by the original specification and original claims. No new matter is incorporated by this Amendment.

Applicants gratefully acknowledge the Examiner's indication that the claims are free of the prior art. The Examiner indicated that the claims would be allowable if rewritten to overcome the rejections under 35 U.S.C. 112. Applicants respectfully submit that each of the rejections under 35 U.S.C. have been addressed below, and that the claims fully comply with 35 U.S.C. 112. Applicants thus submit that the claims are believed to be in condition for allowance. Furthermore, Applicants request that withdrawn claims 14-16 be rejoined and allowed with claims 1-13 and 17.

\* \* \* \* \*

As an initial matter, and in an attempt to clarify the record, Applicants again state the substance of the Interview between Applicants' representative and Examiner Cohen. As discussed in the Supplemental Amendment filed by Applicants on May 7, 2002, Examiner Cohen, on May 2, 2002, contacted Applicants' representative on May 2, 2002 to propose amendments to the claims which, according to Examiner Cohen, would place the present

application in condition for allowance. The amendments to the claims, which were suggested by Examiner Cohen, were submitted in the Supplemental Amendment filed on May 7, 2002. In other words, every change to the claims was suggested by Examiner Cohen and agreed upon during the telephone conversation of May 2, 2002. Applicants' note that the amendments were generally editorial in nature. Upon filing the Supplemental Amendment, Applicants assumed that the next communication from the U.S. PTO would be a Notice of Allowance.

Applicants again kindly remind the Examiner that the M.P.E.P. states:

**When an examiner is assigned to act on an application which has received one or more actions by some other examiner, full faith and credit should be given to the search and action of the previous examiner unless there is a clear error in the previous action or knowledge of other prior art. In general the second examiner should not take an entirely new approach to the application or attempt to reorient the point of view of the previous examiner, or make a new search in the mere hope of finding something. M.P.E.P. § 704.01.**

Applicants submit that the previous Examiner, Examiner Cohen, indicated to Applicants that the present application would be in condition for allowance once the amendments to the claims discussed in the Interview of May 2, 2002 were submitted by Applicants. The claim amendments discussed in the Interview of May 2, 2002 were indeed submitted in the Supplemental Amendment date May 7, 2002. Moreover, the Office has not shown any evidence of clear error on either Applicants' part or Examiner Cohen's part.

\* \* \*

The abstract of the disclosure is objected to because it contains the term "means." In response, Applicants submit herewith a new Abstract of the Disclosure on a separate sheet of paper. In the newly submitted abstract, the words "control means" have been replaced with the term "controller." The objection is thus overcome and its withdrawal is respectfully requested.

\* \* \*

Claims 1-13 are rejected under 35 U.S.C. § 112, first paragraph, as purportedly containing subject matter that was not described in the specification. Applicants respectfully traverse.

The Office Action asserts that specification does not provide for the gas stay being disposed in parallel with the connecting rod throughout the movement of the hinge arm.

Applicants respectfully submit that the relationship between the gas stay and the connecting rod is disclosed in the specification and drawings (i.e. page 12, lines 18-20 and Figs. 2 and 3). The specification teaches that the gas stay is approximately in parallel with the connecting rod. To clarify this feature, Applicants have amended claim 1 to recite “a gas stay ... disposed at substantially the same height as and approximately in parallel with said connecting rod.” Applicants submit that the specification adequately describes each feature of the claimed invention and that the claims fully comply with 35 U.S.C. 112.

The above remarks overcome this rejection. Accordingly, reconsideration and withdrawal of the rejection are respectfully requested.

\* \* \*

Claims 1-13 are rejected under 35 U.S.C. § 112, second paragraph, as purportedly indefinite. Applicants also respectfully traverse this rejection.

The Office Action asserts that the phrase “for pivotal connection with said vehicle body” in claim 1 is indefinite. In response, claim 1 has been amended to recite “so that said rear gate is pivotally connected with said vehicle body.” Thus, it is clear that the rear gate is pivotally connected with the vehicle.

The Office Action also asserts that the terminology “manipulator” in claim 4 lacks an article and is thus indefinite. In response, claim 4 has been amended by inserting the word “a” before the word “manipulator.”

The Office Action also asserts that the terminology "said power source" and "the rotation" render claim 7 indefinite. In response claim 7 has been amended to recite "said power source unit" and "the rotation of said rear gate in a closing direction."

The Office Action further asserts that the term "judges" renders claim 8 indefinite. In response, claim 8 has been amended to recite "said controller judges, based on said detection signal from said position detector, a fully opened condition of said rear gate when said rear gate performing an opening operation is arrived at a predetermined position."

The Office Action also asserts that the phrases "the opening and closing operation" and "at which said rear gate is manually operated" render claim 11 indefinite. In response, claim 11 has been amended to recite "an opening and closing operation" and "when the speed of said rear gate, at which said rear gate is manually operated, is within a specified speed range."

In addition, the Office Action asserts that the terminology "said control means" lacks antecedent basis. In response, the terms "control means" has been replaced by the term "controller" which is introduced in claim 4. Since claim 12 depends from claim 4, the term "controller" has proper antecedent basis.

The amendments to the claims and the above remarks overcome this rejection. Thus, reconsideration and withdrawal are respectfully requested.

\* \* \* \* \*

Applicants respectfully submit that this Amendment and the above Remarks obviate the outstanding objection and rejections in this case, thereby placing the application in condition for immediate allowance. Allowance of this application is earnestly solicited.

If any fees under 37 C.F.R. §§ 1.16 or 1.17 are due in connection with this filing, please charge the fees to Deposit Account No. 02-4300; Order No. 032405.061.

If an extension of time under 37 C.F.R. § 1.136 is necessary that is not accounted for in the papers filed herewith, such an extension is requested. The extension fee should be charged to Deposit Account No. 02-4300; Order No. 032405.061.

Respectfully submitted,

SMITH, GAMBRELL & RUSSELL, LLP

Robert Weilacher Pg No.: 48,1/3

Robert G. Weilacher, Reg. 20,531  
1850 M Street, NW – Suite 800  
Washington, DC 20036  
Telephone : 202/659-2811  
Facsimile : 202/263-4329

Date : February 10, 2003

RGW/BLN

## **MARKED-UP PREVIOUS VERSION OF THE AMENDED CLAIM**

1. (Four times amended) A rear gate opening and closing apparatus for automatically opening and closing a rear gate of a vehicle, comprising:
  - a power source unit that produces power to actuate said rear gate;
  - a slider that transforms said power into a reciprocating motion and for traveling in the longitudinal direction of said vehicle;
  - a hinge arm provided for attachment at an upper end of said rear gate [for pivotal connection] so that said rear gate is pivotally connected with said vehicle body;
  - a connecting rod that interlocks said slider and said hinge arm, said rod transmitting said reciprocating motion to said hinge arm;
  - a mounting base that supports said power source unit and said slider;
  - a mounting base installer for detachably installing said mounting base in a space formed by a rear rail, a side rail and an under roof of said vehicle; and
  - a gas stay rotatably attachable to said side rail at one end thereof and attached to said hinge arm at the other end thereof, and disposed at substantially the same height as and approximately in parallel with said connecting rod throughout movement of said hinge arm for biasing said rear gate in an opening direction.
  
4. (Twice amended) The apparatus according to claim 1, further comprising
  - a position detector for detecting a position of said rear gate and for outputting a detection signal thereof;
  - a manipulator for operating an opening and closing motion of said rear gate; and

a controller for controlling said power source unit for actuating said rear gate so as to automatically open and close said rear gate based on an operating signal from said position detector.

7. (Thrice amended) The apparatus according to claim 4, wherein said controller controls said power source unit for actuating said rear gate so as to vary a closing speed so that the rear gate is rotated in a closing direction against a biasing force of said gas stay when said rear gate is in a self-opening zone and the rotation of said rear gate in a closing direction is restricted when said rear gate is in a self-closing zone.

8. (Thrice amended) The apparatus according to claim 4, wherein said controller judges, based on said detection signal from said position detector, a fully opened [or closed] condition of said rear gate when said rear gate performing an opening operation is arrived at a predetermined position.

11. (Twice amended) The apparatus according to claim 4, wherein said controller judges whether or not [the] an opening and closing operation of said rear gate is performed automatically based on a speed of said rear gate at which said rear gate is manually operated,

when the speed of said rear gate, at which said rear gate is manually operated, is within a specified speed range, said controller judges that the opening and closing operation is performed automatically.

12. (Amended) The apparatus according to claim 4, wherein  
said apparatus has a handle switch for manually opening and closing said rear gate and said  
[control means] controller stops an automatic operation of said rear gate based on a  
detection signal of said handle switch and disengages said clutch.